

ASSEMBLY BILL

No. 2895

Introduced by Committee on Labor and Employment (Assembly Members Roger Hernández (Chair), Chu, Low, McCarty, and Thurmond)

March 1, 2016

An act to amend, repeal, and add Section 6401.7 of the Labor Code, relating to employment safety.

LEGISLATIVE COUNSEL'S DIGEST

AB 2895, as introduced, Committee on Labor and Employment. Employee safety: injury prevention programs.

The California Occupational Safety and Health Act of 1973 establishes certain safety and other responsibilities of employers and employees. Violations of the act under certain circumstances are a crime.

The act requires every employer to establish, implement, and maintain an effective injury prevention program. The act requires the program to be written, except as specified, and to include certain elements. The act requires the employer to identify a person responsible for implementing the program and to correct unsafe and unhealthy conditions and work practices in a timely manner based on the severity of the hazard.

This bill would, commencing July 1, 2017, require an employer to keep a complete, updated copy of specified records relating to the injury prevention program at each worksite and to make them, or a summary thereof, available to any employee upon oral request. The bill would also require an employer to provide a copy of the records, or a summary thereof, to each employee and each new hire, as specified. The bill

would make a violation of certain of these provisions an infraction and would impose civil penalties for certain violations.

Because a violation of these provisions would be a crime under certain circumstances, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6401.7 of the Labor Code is amended to
2 read:

3 6401.7. (a) Every employer shall establish, implement, and
4 maintain an effective injury prevention program. The program
5 shall be written, except as provided in subdivision (e), and shall
6 include, but not be limited to, the following elements:

7 (1) Identification of the person or persons responsible for
8 implementing the program.

9 (2) The employer's system for identifying and evaluating
10 workplace hazards, including scheduled periodic inspections to
11 identify unsafe conditions and work practices.

12 (3) The employer's methods and procedures for correcting
13 unsafe or unhealthy conditions and work practices in a timely
14 manner.

15 (4) An occupational health and safety training program designed
16 to instruct employees in general safe and healthy work practices
17 and to provide specific instruction with respect to hazards specific
18 to each employee's job assignment.

19 (5) The employer's system for communicating with employees
20 on occupational health and safety matters, including provisions
21 designed to encourage employees to inform the employer of
22 hazards at the worksite without fear of reprisal.

23 (6) The employer's system for ensuring that employees comply
24 with safe and healthy work practices, which may include
25 disciplinary action.

1 (b) The employer shall correct unsafe and unhealthy conditions
2 and work practices in a timely manner based on the severity of the
3 hazard.

4 (c) The employer shall train all employees when the training
5 program is first established, all new employees, and all employees
6 given a new job assignment, and shall train employees whenever
7 new substances, processes, procedures, or equipment are introduced
8 to the workplace and represent a new hazard, and whenever the
9 employer receives notification of a new or previously unrecognized
10 hazard. An employer in the construction industry who is required
11 to be licensed under Chapter 9 (commencing with Section 7000)
12 of Division 3 of the Business and Professions Code may use
13 employee training provided to the employer's employees under a
14 construction industry occupational safety and health training
15 program approved by the division to comply with the requirements
16 of subdivision (a) relating to employee training, and shall only be
17 required to provide training on hazards specific to an employee's
18 job duties.

19 (d) The employer shall keep appropriate records of steps taken
20 to implement and maintain the program. An employer in the
21 construction industry who is required to be licensed under Chapter
22 9 (commencing with Section 7000) of Division 3 of the Business
23 and Professions Code may use records relating to employee training
24 provided to the employer in connection with an occupational safety
25 and health training program approved by the division to comply
26 with this subdivision, and shall only be required to keep records
27 of those steps taken to implement and maintain the program with
28 respect to hazards specific to an employee's job duties.

29 (e) (1) The standards board shall adopt a standard setting forth
30 the employer's duties under this section, on or before January 1,
31 1991, consistent with the requirements specified in subdivisions
32 (a), (b), (c), and (d). The standards board, in adopting the standard,
33 shall include substantial compliance criteria for use in evaluating
34 an employer's injury prevention program. The board may adopt
35 less stringent criteria for employers with few employees and for
36 employers in industries with insignificant occupational safety or
37 health hazards.

38 (2) Notwithstanding subdivision (a), for employers with fewer
39 than 20 employees who are in industries that are not on a
40 designated list of high hazard industries and who have a workers'

1 compensation experience modification rate of 1.1 or less, and for
2 any employers with fewer than 20 employees who are in industries
3 that are on a designated list of low hazard industries, the board
4 shall adopt a standard setting forth the employer's duties under
5 this section consistent with the requirements specified in
6 subdivisions (a), (b), and (c), except that the standard shall only
7 require written documentation to the extent of documenting the
8 person or persons responsible for implementing the program
9 pursuant to paragraph (1) of subdivision (a), keeping a record of
10 periodic inspections pursuant to paragraph (2) of subdivision (a),
11 and keeping a record of employee training pursuant to paragraph
12 (4) of subdivision (a). To any extent beyond the specifications of
13 this subdivision, the standard shall not require the employer to
14 keep the records specified in subdivision (d).

15 (3) (A) The division shall establish a list of high hazard
16 industries using the methods prescribed in Section 6314.1 for
17 identifying and targeting employers in high hazard industries. For
18 purposes of this subdivision, the "designated list of high hazard
19 industries" shall be the list established pursuant to this paragraph.

20 (B) For the purpose of implementing this subdivision, the
21 Department of Industrial Relations shall periodically review, and
22 as necessary revise, the list.

23 (4) For the purpose of implementing this subdivision, the
24 Department of Industrial Relations shall also establish a list of low
25 hazard industries, and shall periodically review, and as necessary
26 revise, that list.

27 (f) The standard adopted pursuant to subdivision (e) shall
28 specifically permit employer and employee occupational safety
29 and health committees to be included in the employer's injury
30 prevention program. The board shall establish criteria for use in
31 evaluating employer and employee occupational safety and health
32 committees. The criteria shall include minimum duties, including
33 the following:

34 (1) Review of the employer's periodic, scheduled worksite
35 inspections; investigation of causes of incidents resulting in injury,
36 illness, or exposure to hazardous substances; and investigation of
37 any alleged hazardous condition brought to the attention of any
38 committee member. When determined necessary by the committee,
39 the committee may conduct its own inspections and investigations.

1 (2) (A) Upon request from the division, verification of
2 abatement action taken by the employer as specified in division
3 citations.

4 (B) If an employer's occupational safety and health committee
5 meets the criteria established by the board, it shall be presumed to
6 be in substantial compliance with paragraph (5) of subdivision (a).

7 (g) The division shall adopt regulations specifying the
8 procedures for selecting employee representatives for
9 employer-employee occupational health and safety committees
10 when these procedures are not specified in an applicable collective
11 bargaining agreement. No employee or employee organization
12 shall be held liable for any act or omission in connection with a
13 health and safety committee.

14 (h) The employer's injury prevention program, as required by
15 this section, shall cover all of the employer's employees and all
16 other workers who the employer controls or directs and directly
17 supervises on the job to the extent these workers are exposed to
18 worksite and job assignment specific hazards. Nothing in this
19 subdivision shall affect the obligations of a contractor or other
20 employer that controls or directs and directly supervises its own
21 employees on the job.

22 (i) When a contractor supplies its employee to a state agency
23 employer on a temporary basis, the state agency employer may
24 assess a fee upon the contractor to reimburse the state agency for
25 the additional costs, if any, of including the contract employee
26 within the state agency's injury prevention program.

27 (j) (1) The division shall prepare a Model Injury and Illness
28 Prevention Program for Non-High-Hazard Employment, and shall
29 make copies of the model program prepared pursuant to this
30 subdivision available to employers, upon request, for posting in
31 the workplace. An employer who adopts and implements the model
32 program prepared by the division pursuant to this paragraph in
33 good faith shall not be assessed a civil penalty for the first citation
34 for a violation of this section issued after the employer's adoption
35 and implementation of the model program.

36 (2) For purposes of this subdivision, the division shall establish
37 a list of non-high-hazard industries in California. These industries,
38 identified by their Standard Industrial Classification Codes, as
39 published by the United States Office of Management and Budget
40 in the Manual of Standard Industrial Classification Codes, 1987

1 Edition, are apparel and accessory stores (Code 56), eating and
2 drinking places (Code 58), miscellaneous retail (Code 59), finance,
3 insurance, and real estate (Codes 60–67), personal services (Code
4 72), business services (Code 73), motion pictures (Code 78) except
5 motion picture production and allied services (Code 781), legal
6 services (Code 81), educational services (Code 82), social services
7 (Code 83), museums, art galleries, and botanical and zoological
8 gardens (Code 84), membership organizations (Code 86),
9 engineering, accounting, research, management, and related
10 services (Code 87), private households (Code 88), and
11 miscellaneous services (Code 89). To further identify industries
12 that may be included on the list, the division shall also consider
13 data from a rating organization, as defined in Section 11750.1 of
14 the Insurance Code, and all other appropriate information. The list
15 shall be established by June 30, 1994, and shall be reviewed, and
16 as necessary revised, biennially.

17 (3) The division shall prepare a Model Injury and Illness
18 Prevention Program for Employers in Industries with Intermittent
19 Employment, and shall determine which industries have historically
20 utilized seasonal or intermittent employees. An employer in an
21 industry determined by the division to have historically utilized
22 seasonal or intermittent employees shall be deemed to have
23 complied with the requirements of subdivision (a) with respect to
24 a written injury prevention program if the employer adopts the
25 model program prepared by the division pursuant to this paragraph
26 and complies with any instructions relating thereto.

27 (k) With respect to any county, city, city and county, or district,
28 or any public or quasi-public corporation or public agency therein,
29 including any public entity, other than a state agency, that is a
30 member of, or created by, a joint powers agreement, subdivision
31 (d) shall not apply.

32 (l) Every workers' compensation insurer shall conduct a review,
33 including a written report as specified below, of the injury and
34 illness prevention program (IIPP) of each of its insureds with an
35 experience modification of 2.0 or greater within six months of the
36 commencement of the initial insurance policy term. The review
37 shall determine whether the insured has implemented all of the
38 required components of the IIPP, and evaluate their effectiveness.
39 The training component of the IIPP shall be evaluated to determine
40 whether training is provided to line employees, supervisors, and

1 upper level management, and effectively imparts the information
2 and skills each of these groups needs to ensure that all of the
3 insured's specific health and safety issues are fully addressed by
4 the insured. The reviewer shall prepare a detailed written report
5 specifying the findings of the review and all recommended changes
6 deemed necessary to make the IIPP effective. The reviewer shall
7 be or work under the direction of a licensed California professional
8 engineer, certified safety professional, or a certified industrial
9 hygienist.

10 (m) *This section shall remain in effect only until July 1, 2017,*
11 *and as of that date is repealed.*

12 SEC. 2. Section 6401.7 is added to the Labor Code, to read:

13 6401.7. (a) Every employer shall establish, implement, and
14 maintain an effective injury prevention program. The program
15 shall be written, except as provided in subdivision (f), and shall
16 include, but not be limited to, the following elements:

17 (1) Identification of the person or persons responsible for
18 implementing the program.

19 (2) The employer's system for identifying and evaluating
20 workplace hazards, including scheduled periodic inspections to
21 identify unsafe conditions and work practices.

22 (3) The employer's methods and procedures for correcting
23 unsafe or unhealthy conditions and work practices in a timely
24 manner.

25 (4) An occupational health and safety training program designed
26 to instruct employees in general safe and healthy work practices
27 and to provide specific instruction with respect to hazards specific
28 to each employee's job assignment.

29 (5) The employer's system for communicating with employees
30 on occupational health and safety matters, including provisions
31 designed to encourage employees to inform the employer of
32 hazards at the worksite without fear of reprisal.

33 (6) The employer's system for ensuring that employees comply
34 with safe and healthy work practices, which may include
35 disciplinary action.

36 (b) The employer shall correct unsafe and unhealthy conditions
37 and work practices in a timely manner based on the severity of the
38 hazard.

39 (c) The employer shall train all employees when the training
40 program is first established, all new employees, and all employees

1 given a new job assignment, and shall train employees whenever
2 new substances, processes, procedures, or equipment are introduced
3 to the workplace and represent a new hazard, and whenever the
4 employer receives notification of a new or previously unrecognized
5 hazard. An employer in the construction industry who is required
6 to be licensed under Chapter 9 (commencing with Section 7000)
7 of Division 3 of the Business and Professions Code may use
8 employee training provided to the employer's employees under a
9 construction industry occupational safety and health training
10 program approved by the division to comply with the requirements
11 of subdivision (a) relating to employee training, and shall only be
12 required to provide training on hazards specific to an employee's
13 job duties.

14 (d) The employer shall keep appropriate records of steps taken
15 to implement and maintain the program. An employer in the
16 construction industry who is required to be licensed under Chapter
17 9 (commencing with Section 7000) of Division 3 of the Business
18 and Professions Code may use records relating to employee training
19 provided to the employer in connection with an occupational safety
20 and health training program approved by the division to comply
21 with this subdivision, and shall only be required to keep records
22 of those steps taken to implement and maintain the program with
23 respect to hazards specific to an employee's job duties.

24 (e) (1) An employer shall keep an up-to-date complete copy of
25 the records referred to in subdivision (a) at each worksite, and shall
26 make it available for inspection by any current employee or by the
27 division upon an oral request. The worksite copy shall be in
28 English, and, if the language spoken by the majority of the
29 employees at the worksite is not English, the worksite copy shall
30 also be in the language spoken by the majority of the employees
31 at the worksite.

32 (2) Upon the operative date of this section, an employer shall
33 provide a complete copy of the records referred to in subdivision
34 (a) to each current employee, and, after the operative date of this
35 section, an employer shall provide a complete copy of those records
36 to each new employee at the time of hire. The copy of the records
37 shall be in English or, if the language spoken by the majority of
38 the employees at the worksite is not English, an employee who
39 requests a copy of the records shall be provided with a copy in the
40 language spoken by the majority of the employees at the worksite.

1 If the records referred to in subdivision (a) exceed a total of 50
2 pages, the employer, in lieu of providing a copy as required under
3 this paragraph, shall provide a complete summary that addresses
4 the requirements referred to in subdivision (a), which shall be in
5 English or, if the language spoken by the majority of the employees
6 at the worksite is not English, an employee who requests a copy
7 of the records shall be provided with a summary that is in the
8 language spoken by the majority of the employees at the worksite.

9 (3) An employer who receives a written request for a complete
10 copy of the records referred to in subdivision (a) from a current
11 employee, or his or her authorized representative, shall comply
12 with the request as soon as practicable, but no later than five
13 business days from the date a request pursuant to this paragraph
14 is received. The copy of the records shall be provided to the current
15 employee, or to his or her authorized representative, at no cost.
16 An employer may designate the person to whom a request under
17 this paragraph is to be made. A violation of this paragraph is an
18 infraction. Impossibility of performance, not caused by or a result
19 of a violation of law, shall be an affirmative defense for an
20 employer in any action alleging a violation of this paragraph. For
21 purposes of this paragraph, an “authorized representative” means
22 a person authorized in writing by a current employee to receive a
23 copy of the records referred to in subdivision (a).

24 (4) A failure by an employer to comply with this subdivision,
25 entitles an employee to recover a seven-hundred-fifty-dollar (\$750)
26 penalty from the employer for each violation.

27 (f) (1) The standards board shall adopt a standard setting forth
28 the employer’s duties under this section, on or before January 1,
29 1991, consistent with the requirements specified in subdivisions
30 (a), (b), (c), (d), and (e). The standards board, in adopting the
31 standard, shall include substantial compliance criteria for use in
32 evaluating an employer’s injury prevention program. The board
33 may adopt less stringent criteria for employers with few employees
34 and for employers in industries with insignificant occupational
35 safety or health hazards.

36 (2) Notwithstanding subdivision (a), for employers with fewer
37 than 20 employees who are in industries that are not on a
38 designated list of high hazard industries and who have a workers’
39 compensation experience modification rate of 1.1 or less, and for
40 any employers with fewer than 20 employees who are in industries

1 that are on a designated list of low hazard industries, the board
2 shall adopt a standard setting forth the employer's duties under
3 this section consistent with the requirements specified in
4 subdivisions (a), (b), and (c) except that the standard shall only
5 require written documentation to the extent of documenting the
6 person or persons responsible for implementing the program
7 pursuant to paragraph (1) of subdivision (a), keeping a record of
8 periodic inspections pursuant to paragraph (2) of subdivision (a),
9 and keeping a record of employee training pursuant to paragraph
10 (4) of subdivision (a). To any extent beyond the specifications of
11 this subdivision, the standard shall not require the employer to
12 keep the records specified in subdivision (d).

13 (3) (A) The division shall establish a list of high hazard
14 industries using the methods prescribed in Section 6314.1 for
15 identifying and targeting employers in high hazard industries. For
16 purposes of this subdivision, the "designated list of high hazard
17 industries" shall be the list established pursuant to this paragraph.

18 (B) For the purpose of implementing this subdivision, the
19 Department of Industrial Relations shall periodically review, and
20 as necessary revise, the list.

21 (4) For the purpose of implementing this subdivision, the
22 Department of Industrial Relations shall also establish a list of low
23 hazard industries, and shall periodically review, and as necessary
24 revise, that list.

25 (g) The standard adopted pursuant to subdivision (f) shall
26 specifically permit employer and employee occupational safety
27 and health committees to be included in the employer's injury
28 prevention program. The board shall establish criteria for use in
29 evaluating employer and employee occupational safety and health
30 committees. The criteria shall include minimum duties, including
31 the following:

32 (1) Review of the employer's periodic, scheduled worksite
33 inspections; investigation of causes of incidents resulting in injury,
34 illness, or exposure to hazardous substances; and investigation of
35 any alleged hazardous condition brought to the attention of any
36 committee member. When determined necessary by the committee,
37 the committee may conduct its own inspections and investigations.

38 (2) (A) Upon request from the division, verification of
39 abatement action taken by the employer as specified in division
40 citations.

1 (B) If an employer's occupational safety and health committee
2 meets the criteria established by the board, it shall be presumed to
3 be in substantial compliance with paragraph (5) of subdivision (a).

4 (h) The division shall adopt regulations specifying the
5 procedures for selecting employee representatives for
6 employer-employee occupational health and safety committees
7 when these procedures are not specified in an applicable collective
8 bargaining agreement. No employee or employee organization
9 shall be held liable for any act or omission in connection with a
10 health and safety committee.

11 (i) The employer's injury prevention program, as required by
12 this section, shall cover all of the employer's employees and all
13 other workers who the employer controls or directs and directly
14 supervises on the job to the extent these workers are exposed to
15 worksite and job assignment specific hazards. Nothing in this
16 subdivision shall affect the obligations of a contractor or other
17 employer that controls or directs and directly supervises its own
18 employees on the job.

19 (j) When a contractor supplies its employee to a state agency
20 employer on a temporary basis, the state agency employer may
21 assess a fee upon the contractor to reimburse the state agency for
22 the additional costs, if any, of including the contract employee
23 within the state agency's injury prevention program.

24 (k) (1) The division shall prepare a Model Injury and Illness
25 Prevention Program for Non-High-Hazard Employment, and shall
26 make copies of the model program prepared pursuant to this
27 subdivision available to employers, upon request, for posting in
28 the workplace. An employer who adopts and implements the model
29 program prepared by the division pursuant to this paragraph in
30 good faith shall not be assessed a civil penalty for the first citation
31 for a violation of this section issued after the employer's adoption
32 and implementation of the model program.

33 (2) For purposes of this subdivision, the division shall establish
34 a list of non-high-hazard industries in California. These industries,
35 identified by their Standard Industrial Classification Codes, as
36 published by the United States Office of Management and Budget
37 in the Manual of Standard Industrial Classification Codes, 1987
38 Edition, are apparel and accessory stores (Code 56), eating and
39 drinking places (Code 58), miscellaneous retail (Code 59), finance,
40 insurance, and real estate (Codes 60–67), personal services (Code

1 72), business services (Code 73), motion pictures (Code 78) except
2 motion picture production and allied services (Code 781), legal
3 services (Code 81), educational services (Code 82), social services
4 (Code 83), museums, art galleries, and botanical and zoological
5 gardens (Code 84), membership organizations (Code 86),
6 engineering, accounting, research, management, and related
7 services (Code 87), private households (Code 88), and
8 miscellaneous services (Code 89). To further identify industries
9 that may be included on the list, the division shall also consider
10 data from a rating organization, as defined in Section 11750.1 of
11 the Insurance Code, and all other appropriate information. The list
12 shall be established by June 30, 1994, and shall be reviewed, and
13 as necessary revised, biennially.

14 (3) The division shall prepare a Model Injury and Illness
15 Prevention Program for Employers in Industries with Intermittent
16 Employment, and shall determine which industries have historically
17 utilized seasonal or intermittent employees. An employer in an
18 industry determined by the division to have historically utilized
19 seasonal or intermittent employees shall be deemed to have
20 complied with the requirements of subdivision (a) with respect to
21 a written injury prevention program if the employer adopts the
22 model program prepared by the division pursuant to this paragraph
23 and complies with any instructions relating thereto.

24 (l) With respect to any county, city, city and county, or district,
25 or any public or quasi-public corporation or public agency therein,
26 including any public entity, other than a state agency, that is a
27 member of, or created by, a joint powers agreement, subdivision
28 (d) shall not apply.

29 (m) Every workers' compensation insurer shall conduct a
30 review, including a written report as specified below, of the injury
31 and illness prevention program (IIPP) of each of its insureds with
32 an experience modification of 2.0 or greater within six months of
33 the commencement of the initial insurance policy term. The review
34 shall determine whether the insured has implemented all of the
35 required components of the IIPP, and evaluate their effectiveness.
36 The training component of the IIPP shall be evaluated to determine
37 whether training is provided to line employees, supervisors, and
38 upper level management, and effectively imparts the information
39 and skills each of these groups needs to ensure that all of the
40 insured's specific health and safety issues are fully addressed by

1 the insured. The reviewer shall prepare a detailed written report
2 specifying the findings of the review and all recommended changes
3 deemed necessary to make the IIPP effective. The reviewer shall
4 be or work under the direction of a licensed California professional
5 engineer, certified safety professional, or a certified industrial
6 hygienist.

7 (n) This section shall become operative on July 1, 2017.

8 SEC. 3. No reimbursement is required by this act pursuant to
9 Section 6 of Article XIII B of the California Constitution because
10 the only costs that may be incurred by a local agency or school
11 district will be incurred because this act creates a new crime or
12 infraction, eliminates a crime or infraction, or changes the penalty
13 for a crime or infraction, within the meaning of Section 17556 of
14 the Government Code, or changes the definition of a crime within
15 the meaning of Section 6 of Article XIII B of the California
16 Constitution.